O/0172/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003873686
BY PATRONUS WEALTH HOLDINGS LIMITED
TO REGISTER:

PATRONUS

IN CLASS 36

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000441629 BY
PATRONAS FINANCIAL SYSTEMS GMBH.

Background and pleadings

1. On 2 February 2023, Patronus Wealth Holdings Limited ("the applicant") applied to register in the UK the trade mark shown on the cover page of this decision ("the applicants mark"). The application was accepted and published for opposition purposes on 21 April 2023 and registration is sought for the following services:[1]

   Class 36: Financial services relating to wealth management; wealth management; Advisory services relating to financial asset management; Asset and portfolio management; Asset management; Asset management for third parties; Asset management services; Financial asset management; Investment asset management; Management of assets; management of financial assets; Property asset management services; Fund management for private clients; Private equity fund investment services; Advisory services relating to financial investment; Advisory services relating to investments; Capital investment; Capital investment advisory services; Capital investment fund management; Capital investment services; Equity capital investment; Financial investment; Financial investment fund services; Financial investment in the field of securities; Financial investment management services; Financial investment services; Fund investment services; Funds investment; Hedge fund investment services; Investment; Investment advisory services; Investment business services; Investment consultation; Investment consultancy; Investment consultation services; Investment custody; Investment management; Investment management of funds; Investment of funds; Investment of funds for others; Investment planning; Investment portfolio management services; Financial securities; Management of listed securities; Management of securities; Management of securities portfolios; Securities investment services; Financial sponsorship; Insurance underwriting; Actuarial services; Safe deposit services; Brokerage services; Insurance brokerage services; Securities brokerage services; Carbon brokerage services; Pawnbrokerage; Appraisals [valuation] of antiques; Appraisals [valuation] of jewellery; Financial appraisal services; Art appraisal; Investment appraisal

[1] I note from the Form TM7 dated 28 August 2023 that the opponent is only opposing the applicant's services listed in paragraph 55 below.

services; Financial management; Financial research; Financial transaction services .

2. The applicant's mark claims priority from an earlier trade mark registered by the applicant in Mauritius. As such, the applicant's mark benefits from an earlier priority date of 15 December 2022, being the filing date of the applicant's Mauritius mark.

3. On 28 June 2023, PATRONAS Financial Systems GmbH ("the opponent") filed an opposition partially opposing the application under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following mark:

   PATRONAS

   UK registration no.UK00913394581
   Filing date 23 October 2014; registration date 4 March 2015
   Relying on all goods and services, being those listed in Annex 1 of this decision.

4. The opponent's mark is a comparable mark based on an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

5. By virtue of relying on section 5(2)(b) of the Act, the opponent's case is that the marks at issue are similar and that the goods of the parties are either identical or similar, resulting in a likelihood of confusion.

6. The applicant filed a counterstatement denying the claims made against it. It is noted that the applicant also elected to request proof of use from the opponent, in relation to what appears to be the opponent's class 36 services only.

7. The opponent is represented by TPT Cambridge. The applicant is represented by Ali Tyebkhan. Only the opponent filed evidence. No hearing was requested. Only

the opponent filed written submissions. This decision is taken following a careful perusal of the papers.

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

PRELIMINARY ISSUE

9. In its defence and counterstatement, the applicant's request for proof of use contained the following comment:

7. Request for "proof of use"

Please see Tribunal Work Manual Section 3.1.10 Proof of use in opposition proceedings or Section 3.4.6 Proof of use in invalidation proceedings.

If the person opposing or applying to cancel your trade mark has provided a statement of use on grounds raised under sections 5(1) and 5(2) and 5(3) of the Trade Marks Act, you can request that they provide evidence to show that they are using their trade mark; this is called "proof of use".
If you do not request "proof of use" the opponent's statement of use will be accepted with the consequence that the earlier mark(s) may be relied upon for all the goods/services identified in the statement of use.

This is not applicable if this is a fast track opposition, in these circumstances please go straight to Section 8.

Do you want the opponent to provide "proof of use"?

☑ Yes ☐ No **> GO TO Section 8**

List of goods and/or services

List goods/ services for which you require 'proof of use'. Please use a continuation sheet if not enough space.

Note: If more than one trade mark is being relied upon by the opponent or cancellation applicant, please provide the number(s) of the trade mark(s) for which you would like the other party to provide "proof of use".

Trademark No. UK00913394581 - Class 36
- financial transaction and payment services, for example, exchanging money, electronic funds transfer, processing of credit card and debit card payments, issuance of travellers' cheques; financial management and research; financial appraisals, for example, jewellery, art and real estate appraisal, repair costs evaluation; cheque verification; financing and credit services, for example, loans, issuance of credit cards, hire- or lease-purchase financing; crowdfunding; safe deposit services; financial sponsorship; real estate agency services, real estate management, rental of apartments, rent collection; insurance underwriting, actuarial services; brokerage services, for example, securities, insurance and real estate brokerage, brokerage of carbon credits, pawnbrokerage.

The applicant has listed services that do not appear in the opponent's class 36 specification. The opponent is expected neither to demonstrate use for goods and services on the basis that they appear in the applicant's specification, nor to demonstrate use for any goods and services that do not feature in its own marks' specifications. Additionally, the opponent is not required to demonstrate use for any goods or services that were not requested by the applicant.

10. I acknowledge that the applicant's proof of use request is ambiguous. However, as the applicant has stated ""Trademark No. UK00913394581 – Class 36" in the proof of use request in their defence and counterstatement, I will proceed on the basis that the applicant requires proof of use of all of the opponent's class 36 services. I note the applicant has not requested use of the opponent's class 9 goods or class 38 or class 42 services, and as such the opponent may rely on these goods and services as registered, without the requirement to prove use of its mark in respect of the same. I consider that the services listed below ""Trademark No. UK00913394581 – Class 36" are an error as they do not correspond to the opponent's class 36 services.

11. The opponent has provided written submissions dated 31 March 2025. Paragraphs 3, 5 and 6 of these written submissions state "the applicant disagrees with…". However, these are submissions of the opponent not the applicant and are referring to the applicant's Form TM8 and counterstatement. Given this, I assume that the opponent has mistakenly referred to themselves as the applicant in these paragraphs. This incorrect reference does not affect the outcome of this opposition.

EVIDENCE

12. The opponent's evidence in chief came in the form of the witness statement of Adam Tolfree dated 31 March 2025. Mr Tolfree is a patent agent employed with TPT, the representative company of the opponent. Mr Tolfree's statement is accompanied by 3 exhibits being Exhibits 1 - 3.

13. I do not intend to summarise the evidence in full here (or the submissions of the opponent for that matter). However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Proof of use – class 36 services only

14. Firstly, I will consider if genuine use has been shown of the opponent's class 36 services.

15. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

> "(6)(1) In this Act an "earlier trade mark" means –
>
> (a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,
>
> (aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;
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> (ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.
>
> […]

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

16. Section 6A is also relevant. It reads:

"(1) This section applies where:

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

17. Section 100 of the Act is also relevant. It reads:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

18. As the opponent’s mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A to the United Kingdom include the European Union".

19. Given its earlier filing date, the opponent's mark qualifies as an earlier trade mark under the above provisions. The opponent's mark completed its registration process over five years prior to the priority date of the applicant's mark. As set out above, the applicant requested that the opponent provide proof of use in respect of its class 36 services only. As a result, the opponent's mark is subject to the proof of use assessment in respect of its class 36 services.

20. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-

9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C– 721/18 Ferrari SpA v DU [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of

the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

21. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander QC (as he then was) as the Appointed Person stated that:

> "22. The burden lies on the registered proprietor to prove use. […] However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

22. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs QC (as he then was) as the Appointed Person stated that:

> "21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:
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> > '[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and

purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.'

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

23. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the mark.

24. Section 6A of the Act (cited above) confirms that the relevant period for the present assessment is the five-year period prior to the priority date of the applicant's mark, being 15 December 2022. The relevant period is, therefore, 16 December 2017 to 15 December 2022 ("the relevant period").

25. As the opponent's mark is a comparable mark, use of the same in the EU prior to IP Completion Day (being 31 December 2020) is relevant to the present

assessment.[2] As the relevant period falls partially prior to IP Completion Day, the EU is the relevant territory from 16 December 2017 to 31 December 2020 and the UK is the relevant territory from 1 January 2021 to 15 December 2022. On this point, I refer to the case of *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, wherein the Court of Justice for the European Union ("CJEU") noted that:

> "It should, however, be observed that … the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase 'in the Community' is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use."
>
> And
>
> "50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as 'genuine use', it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark."

26. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real"[3] because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark" is, therefore, not genuine use.

[2] See Schedule 2A of the Act and paragraph 4 of Tribunal Practice Notice 2/2020
[3] *Jumpman* BL O/222/16

27. Whether the use shown is sufficient will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods/services at issue during the relevant five-year period. In making the assessment, I am required to consider all relevant factors, including:

    a. The scale and frequency of the use shown;
    b. The nature of the use shown;
    c. The goods/services for which use has been shown;
    d. The nature of those goods/services and the market(s) for them; and
    e. The geographical extent of the use shown.

Form of the mark

28. Before I move on to assess the sufficiency of the evidence, I shall begin by addressing the way in which the opponent's mark has been displayed in the evidence. The opponent's mark is a word only mark for the word 'PATRONAS'. The marks actually used throughout the evidence constitute use in a differing form to that as registered, as per the three variants below:

A)

B)

C)

29. Where there is use of a sign in a differing form to the mark as registered, it is necessary to decide whether that sign constitutes an acceptable variant of that registered mark, for the purposes of establishing genuine use of the same.

30. The opponent's mark is registered as a plain word mark. This means that it is the word itself, not the word in a particular typeface or capitalisations, that is protected.[4] The distinctive character of the opponent's mark lies in the word "PATRONAS".

31. In *Dreamersclub Ltd v KTS Group Ltd*, BL O/091/19, Mr Philip Johnson, as the Appointed Person, found that the use of the mark shown below qualified as use of the registered word-only mark DREAMS. This was because the stylisation of the word did not alter the distinctive character of the word mark. Rather, it constituted an expression of the registered word mark in normal and fair use.

32. In *Colloseum Holdings AG v Levi Strauss & Co.*,[5] the CJEU found that:

> "31. It is true that the 'use' through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas 'genuine use', within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, 'use' within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish 'use' within the meaning

[4] *La Superquimica v EUIPO, T-24/1,7* EU:T:2018:668.
[5] Case C-12/12

of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.

32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in Nestlé, the 'use' of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition by a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35. Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)." (emphasis added)

33. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under section 46(2). He said:

“13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hyphen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Sr*l, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder,* EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD

MEDIA. It took the view that the omission of the word "MEDIA" would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA Page 23 of 25 were in combination weakly distinctive, and the word MOOD alone was less distinctive still.

34. I consider that there are multiple differences between the word-only mark and the three variants shown at paragraph 28 above. In all three variants the letter "O" in PATRONAS is no longer the letter "O" and it has instead been changed to a figurative globe device. Variants A) and C) use colour, and there is the addition of wording being "Financial Systems" in variants A) and B) and the addition of the wording "Trade Director" in variant C), as well as the underlining in each variant and the addition of a blue square in variant C). These changes clearly alter the mark as registered, and I will therefore consider at this stage if they constitute acceptable variants of the same.

35. I note firstly that the earlier mark is a word mark filed in black and white. Whilst fair and notional use of a black and white mark does cover use in colour, it does not cover complex colour arrangements.[6] However, in my view, the colours used in two of the variants do not represent a complex arrangement, they are two solid colours, and they are acceptable in line with the relevant case law.

36. Next, I note the element representing the word PATRONAS is used alongside other elements, including the descriptive wording "Financial Systems" and "Trade Director", as well as alongside a simple blue square in variant C) and underline in all three variants. However, it is my view that the element representing the word PATRONAS still acts as an independent indicator of origin in all three variants, meaning its use alongside the additional elements is acceptable in accordance with the case law set out in *Colloseum,* cited above. Further, I note in any case *Lactalis* cited above, states the addition of descriptive or suggestive words is unlikely to change the distinctive character, and I consider this to be the case with the additional wording here.

[6] See the judgment of the Court of Appeal in Specsavers [2014] EWCA Civ 1294 and *J.W. Spear & Sons Ltd v Zynga, Inc.* [2015] EWCA Civ 290, at paragraph 47.

37. I therefore move on to consider the changes made to the word PATRONAS itself. I consider that the protection of a word mark (and therefore its distinctive character) relates to the letters or words themselves and not the form in which they are presented; see *La Superquimica v EUIPO*, T-24/17.[7] *Dreamersclub,* cited above, states word marks have a broad protection in that the font (referring to typeface, size and weight) they are presented in must not be taken into account.[8] I also at this stage note the comments from Phillip Harris, sitting as the Appointed Person in *Human Race*[9] stating that the decision of *Dreamersclub* does not limit the principles set out in *La Superquimica,* cited above*,* to fonts that are "normal and fair". Mr Harris sets out that instead fonts must not be taken into account when considering the use of wordmarks. I consider these principles, and this broad protection certainly applies when considering the font used in relation to the letters PATR-NAS within the variants used. However, they do not, in my view, extend to the replacement of a letter with a device (in this case a globe device). This is because I do not consider use of a device in place of a letter as use of an alternative font. Whilst consumers will likely consider the globe device as a stand in for the letter "O", it is not the letter "O" itself. It is my view that the insertion of a globe device into, and removal of the letter "O" from, the word itself, results in an alteration to the distinctive character of the mark as registered, which as previously set out, lies in the letters used. For this reason, I do not, therefore, consider that any of the three variants are acceptable variants of the opponent's mark.

38. However, in case I am wrong on this point, I will nonetheless go on to consider the sufficiency of the evidence of use provided (in the case that these are considered to be acceptable variants) below.

Evidence of use

39. I note the following from the witness statement of Mr Tolfree:

[7] EU:T:2018:668, paragraph 39.
[8] See also T-333/15 *Josel v EUIPO*, EU:T:2017:444.
[9] BL O/0234/25

a. Mr Tolfree sets out that he is a patent agent employed with TPT, the representative company of the opponent.

b. Mr Tolfree states the relevance of the three exhibits appended to his witness statement are detailed in the submissions dated 31 March 2025. Mr Tolfree's witness statement does not contain any information regarding the exhibits apart from Mr Tolfree stating that except for the invoice, each are true copies of webpages or documents downloaded from publicly accessible websites identified in research carried out by the opponent and himself.

c. As Mr Tolfree's witness statement contains a statement of truth and refers to the written submissions detailing the relevance of the exhibits, I will refer to the information stated about the exhibits in the written submissions.

d. Mr Tolfree's written submissions state that Exhibit 1 of Mr Tolfree's witness statement is a social media post detailing the applicant's participation at a conference called InvestOps held in London in 2022, Exhibit 2 is an invoice dated 10 February 2023 to a customer in the United Kingdom and Exhibit 3 is screenshots taken from the opponent's website as recorded by Waybackmachine in November 2020. Mr Tolfree states that Exhibit 3 includes a page to news articles which includes details of a news article at which representative of the opponent was interviewed at a summit in London in March 2020.

e. Mr Tolfree provides an undated online extract showing details of an invitation on LinkedIn to an InvestOps Europe 2022 event dated Sep 27, 2022, 7:00am-Sep 28, 2022, 1:00pm.[10] The invitation states that the "Event by PATRONAS is now called Etops". Additionally, the invitation states "Event ended" which appears to indicate that this screenshot was taken after 28 September 2022. However, the event was scheduled to take place within the relevant period.

[10] Exhibit 1.

f. One invoice has been provided showing the license fee, broker license and platform licences fees to a customer in London.[11] I note this invoice is dated 10 February 2023 and falls outside of the relevant period. Given this, I will not take this invoice into consideration.

g. In his submissions, Mr Tolfree states that Exhibit 3 includes a page of news articles which includes details of a news article at which a representative of the opponent was interviewed at a summit in London in March 2020. The news articles referred to are all links. As stated in the Registry's correspondence dated 31 January 2025, references to weblinks are not sufficient as the Hearing Officer will not undertake any independent research. The Registry's correspondence stated that any evidential material that the opponent wished to be considered by the Hearing Officer must be clearly set out and presented in, or as, an exhibit to a witness statement, statutory declaration or affidavit. Consequently, I am unable to take the contents of the news article dated March 2020 into consideration. If I look at the information provided in Exhibit 3 this appears to be a web page dated 31 March 2025, which is outside of the relevant period. Given this, I will not take this into consideration.

Assessment of evidence

40. I will now consider an assessment of the evidence. This is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.[12]

41. As indicated in the case law cited above, use does not need to be quantitatively significant in order to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark which can be regarded as "warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark".

[11] Exhibit 2.
[12] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

42. The opponent's documentary evidence of use can briefly be summarised as an undated online Linkedin invitation for an event that was due to take place on 27-28 September 2022, one invoice that falls outside of the relevant period that I cannot take into consideration and a web page that appears to be dated outside of the relevant period that contains a link to a news article I am unable to access and consequently cannot take into consideration.

43. There are multiple issues with the evidence. The first is that there are no turnover figures and neither is there any information as to advertising or marketing spend. The absence of such is not automatically fatal to the issue of genuine use but it does cause me some issues in that I am not able to determine the overall picture with regard to sales in the UK (or EU where relevant) during the relevant period.

44. This leads me to the second criticism of the evidence, which is Mr Tolfree provides only one invoice, which is actually outside of the relevant period and cannot be taken into consideration. The opponent was aware of its need to show use of its mark in the relevant period. It is fairly common for only a sample of invoices to be filed in proceedings such as these, for various reasons including to limit the volume of evidence. However, in the case before me, such a small selection of one invoice has not assisted the opponent, especially when the one invoice provided is outside of the relevant period and when it is not accompanied by revenue/turnover figures, for example. It was open to, and presumably entirely possible for, the opponent, in order to demonstrate genuine use, to (1) provide overall revenue/turnover figures, (2) file all of the invoices for the relevant period, or (3) file a representative sample from each year of the relevant period. It did not. Instead it only filed one invoice from 2023.

45. Thirdly, the first exhibit shows an online invitation to an InvestOps Europe 2022 event scheduled for 27 Sep 2022 – 28 Sep 2022. The invitation states that the "Event by PATRONAS is now called Etops". Given this, it is not clear if the Patronas mark was displayed at the event as it was then called Etops. Additionally, I have no information regarding this event other than the invitation. I have no documentary evidence or submissions as to how many UK consumers, or those in the trade, attended the event and were exposed to the mark, or whether those converted into sales.

46. Lastly, Mr Tolfree states that Exhibit 3 includes a page to news articles which includes details of a news article at which a representative of the opponent was interviewed at a summit in London in March 2020. As stated previously, I am unable to access this link as the contents of the news article link was not provided. If the opponent wanted the Hearing Officer to have access to the news article they should have provided this in hard copy.

47. As per *Awareness Limited v Plymouth City Council*, cited above, the burden lies on the opponent to prove use. Taking all of the evidence into account and considering all of the criticisms cited above, I find that the material provided is insufficient to demonstrate that the opponent has genuinely used its mark within the relevant period and within the relevant territory in relation to class 36 services. As this is something that could reasonably have been provided, I am entitled to be sceptical of the evidence provided by the opponent. I note that the limited evidence filed does not establish or even suggest the level of turnover or sales achieved by the opponent within the relevant period, nor does it show that the opponent's mark has been consistently in use within the same in respect of the relevant services. On this point, I have no evidence for the size of the market for the services at issue, however, I am of the view that the market for the services at issue is a relatively sizable one. Again, I remind myself that use need not be quantitatively significant in order for it to be deemed genuine but, in the present case, I am of the view that the use shown in the evidence is at such a low level I am not satisfied that it demonstrates that the opponent has genuinely tried to create or preserve a market share for its class 36 services in the UK.

48. I will now consider if there is a likelihood of confusion under section 5(2)(b) between the applicant's class 36 services that the opponent has opposed (as stated in paragraph 55 below) and the opponent's class 9 goods and class 38 and class 42 services, in respect of which the opponent is not required to prove use.

Section 5(2)(b): legislation and case law

49. Section 5(2)(b) of the Act reads as follows:

> "5(2) A trade mark shall not be registered if because-
>
> (a) …
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

50. Section 5A of the Act states as follows:

> "Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

51. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

> "(6)(1) In this Act an "earlier trade mark" means –
>
> (a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

52. The opponent's mark qualifies as an earlier trade mark under the above provisions. As the opponent's mark had completed its registration process more than five

years before the filing date of the applicant's mark, it is subject to proof of use pursuant to section 6A of the Act. However, as stated previously the applicant only requested proof of use in relation to the opponent's class 36 services. Consequently, the opponent may rely on the goods highlighted in class 9, class 38 and class 42 for this section of the decision.

53. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

54. The opponent's goods and services can be found in Annex 1. For the basis of this section, I will not be referring to the opponent's class 36 services given the opponent has not shown genuine use for these services.

55. The opponent is only opposing some services of the applicant, those being the following:

Class 36 - Financial services relating to wealth management; wealth management; Advisory services relating to financial asset management; Asset and portfolio

management; Asset management; Asset management for third parties; Asset management services; Financial asset management; Investment asset management; Management of assets; management of financial assets; Property asset management services; Fund management for private clients; Private equity fund investment services; Advisory services relating to financial investment; Advisory services relating to investments; Capital investment; Capital investment advisory services; Capital investment fund management; Capital investment services; Equity capital investment; Financial investment; Financial investment fund services; Financial investment in the field of securities; Financial investment management services; Financial investment services; Fund investment services; Funds investment; Hedge fund investment services; Investment; Investment advisory services; Investment business services; Investment consultation; Investment consultancy; Investment consultation services; Investment custody; Investment management; Investment management of funds; Investment of funds; Investment of funds for others; Investment planning; Investment portfolio management services; Financial securities; Management of listed securities; Management of securities; Management of securities portfolios; Securities investment services; Financial sponsorship; Insurance underwriting; Actuarial services; Safe deposit services; Brokerage services; Securities brokerage services; Financial appraisal services; Investment appraisal services; Financial management; Financial research; Financial transaction services.

56. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon*, where the CJEU stated at paragraph 23 of its judgement:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary."

57. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

58. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court ("GC") stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

59. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the*

Internal Market (Trade Marks and Designs) (OHIM), Case T-325/06, the GC stated that "complementary" means:

> "...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

60. In *Sanco SA v OHIM,* Case T-249/11, the GC indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited* BL-O-255-13:

> "It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes."

61. Whilst on the other hand:

> ".....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together."

62. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

> "[…] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU

in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words of phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

63. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark.*[13]

64. The opponent's position is that the applicant services opposed, stated at paragraph 55 above, are identical to and/or highly similar to those of the earlier registration. The opponent submits that the goods are clearly similar in nature.

65. The applicant filed a counterstatement stating that the services offered by the opponent are notably different from those of the applicant, as they are centred around technological solutions and do not involve direct financial advisory or wealth management activities. The applicant states that the opponent's description of its trademark explicitly limits the scope of services to "computer" or "computerised" solutions within class 36, and additionally covers other classes like class 9, 38 and 42 all of which are related to computer and software goods and services – therefore not financial and investment services. The applicant states there is no real possibility of confusion between the two marks, especially given the clear distinction in their respective businesses, the nature of the services they offer and the markets they serve.

66. While the applicant's comments are noted, when considering the likelihood of confusion under section 5(2)(b) the assessment must be based, on the concept of 'notional and fair use' which involves carrying out the comparison of the goods and

[13] BL O-399-10 (AP)

services based on the specifications before me, not the goods effectively provided by the parties.[14]

67. Pursuant to section 60A of the Act, I am mindful of the fact that the goods may not be automatically found to be dissimilar simply because they fall in a different class.

Financial services relating to wealth management; wealth management; Advisory services relating to financial asset management; Asset and portfolio management; Asset management; Asset management for third parties; Asset management services; Financial asset management; Investment asset management; Management of assets; management of financial assets; Property asset management services; Fund management for private clients; Private equity fund investment services; Advisory services relating to financial investment; Advisory services relating to investments; Capital investment; Capital investment advisory services; Capital investment fund management; Capital investment services; Equity capital investment; Financial investment; Financial investment fund services; Financial investment in the field of securities; Financial investment management services; Financial investment services; Fund investment services; Funds investment; Hedge fund investment services; Investment; Investment advisory services; Investment business services; Investment consultation; Investment consultancy; Investment consultation services; Investment custody; Investment management; Investment management of funds; Investment of funds; Investment of funds for others; Investment planning; Investment portfolio management services; Financial securities; Management of listed securities; Management of securities; Management of securities portfolios; Securities investment services; Financial sponsorship; Insurance underwriting; Safe deposit services; Financial appraisal services; Investment appraisal services; Financial management; Financial research; Financial transaction services.

68. All of the applicant's services above are types of financial services. The closest comparable opponent's terms lie within the opponent's class 9 specification being "financial management software", "computer software relating to the handling of

[14] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited,* Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

financial transactions" and "computer software". While these terms differ in nature and method of use, I do consider them to be similar to a degree. I say this because the purpose of the opponent's terms specified are to allow the user to manage their finances, which overlaps with the purpose of the above applicant's services. Further, I consider it likely that the provider of financial services may also provide software to its customers in order for them to manage their finances. Further, the users will also overlap. The goods and services are not competitive in nature. In respect of complementarity, I do consider that these goods and services are important to one another as financial services may require the use of software and the supportive/complementary nature of the opponent's terms is apparent. This finding is supported by Mr Thomas Mitcheson KC (The Appointed Person) in the appeal decision of *MFS Africa Limited* (BLO/531/22) where he stated he disagreed with the Hearing Officer's conclusion that there are no similarities between computer software and mobile applications and the financial services in the opponent's specification, and the supportive/complementary nature of the former is apparent and sufficient to render the goods/services as having a low degree of similarity. Taking all of this into account, I find that these goods and services are similar to a low degree.

Actuarial services.

69. The closest comparable term in the opponent's specification to the above term of the applicant lies within the opponent's class 9 specification being "Computer software for financial affairs, monetary affairs, computer analyses of stock exchange information, computerised securities brokerage, computerised information relating to stocks, automated banking, computerised banking, electronic banking, computerised information relating to banking matters, computerised financial consultancy, computerised financial data services, computerised information relating to finance, automated recording of financial transactions, actuarial services relating to financial transactions, computerised financial services relating to foreign currency dealings, computerised financial information, providing of financial services by means of a global computer network or the internet, computerised information relating to financial management, trading in currencies, financial consultancy, financial information, data and advice,

consultancy in relation to financial risk management". This opponent's term includes "Computer software for… actuarial services relating to financial transactions…" As the applicant's *actuarial services* are a type of financial service and as per the reasoning in the preceding paragraph, I find that these goods and services are similar to a low degree.

Brokerage services; Securities brokerage services.

70. The closest comparable term in the opponent's specification to the above applicant's terms lies within the opponent's class 9 specification being "Computer software for financial affairs, monetary affairs, computer analyses of stock exchange information, computerised securities brokerage, computerised information relating to stocks, automated banking, computerised banking, electronic banking, computerised information relating to banking matters, computerised financial consultancy, computerised financial data services, computerised information relating to finance, automated recording of financial transactions, actuarial services relating to financial transactions, computerised financial services relating to foreign currency dealings, computerised financial information, providing of financial services by means of a global computer network or the internet, computerised information relating to financial management, trading in currencies, financial consultancy, financial information, data and advice, consultancy in relation to financial risk management." This opponent's term includes "Computer software for… computerised securities brokerage…" As the above applicant's services are types of financial services and as per the reasoning in paragraph 68 above, I find that these goods and services are similar to a low degree.

The average consumer and the nature of the purchasing act

71. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

72. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs)

and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

73. I have no submissions from the opponent as to who the average consumer for the goods and services at issue will be. In their counterstatement, the applicant states that the applicant primarily targets high-net-worth individuals, institutional investors and clients seeking wealth management and investment services, while the opponent caters to businesses within the financial technology space that require software solutions. The applicant states that this fundamental difference in the type of customers each party serves further reduces the likelihood of any confusion between the marks. As stated previously, while these comments are noted, when considering the likelihood of confusion under section 5(2)(b) the assessment must be based, on the concept of 'notional and fair use'.

74. I am of the view that the average consumer will be both members of the general public at large and business users or professionals, for example, in the financial sector. Given the wide ranging nature of the goods and services at issue, I find that the frequency of selection and cost of the goods/services will vary quite considerably. For example, "computer software" is a very broad term and will inevitably cover some cheaper and more frequently selected goods whereas some "investment portfolio management services" will be expensive and selected on a more infrequent basis. Plainly, some goods will attract a lower degree of attention (where "computer software" covers cheap downloadable apps, for example) and some will attract a high degree of attention. The services are specialised and consumers would be alive to matters such as return for investment, security, interest rates and service standard. Typically, for the services, prior consultation or research may be conducted before purchase. This leads me to conclude that the consumer groups would pay a high degree of attention in relation to the services.

75. The goods and services are likely to be selected through perusal of brochures, websites and advertisements, so the visual element will be important. However, I do not discount aural considerations, since the goods and services may be acquired through word-of-mouth recommendations or following an initial meeting with potential providers or financial advisors.

Comparison of the marks

76. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components.

77. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

> "…..it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

78. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

79. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
PATRONAS	PATRONUS

80. In its notice of opposition and statement of grounds, the opponent submits that the marks are visually highly similar, aurally highly identical and semantically identical. The opponent submits that the marks are very clearly visually, orally and conceptually similar. The opponent submits that the sole difference between the mark is the change of the second “a” to a “u”. The opponent states that this change at the end of the word is so slight that the marks look identical on initial inspection and have substantially identical pronunciations to the native English speaker. The opponent states it’s registration is a word only mark so the get-up the opponent chooses has no bearing on the current matter.

81. In its counterstatement, the applicant states that its mark is distinctly different from the opponent’s mark. The applicant states that the mark differs not only in spelling but also in sound and meaning. The applicant submits that the pronunciation and visual appearance of the marks are clearly distinguishable, making it improbable that an average consumer would confuse one mark for the other. The applicant states that its mark should be considered on its own merits, independent of the opponent’s mark, and the mere fact that both marks may fall under the same broad class of services is insufficient to warrant opposition.

Overall impression

82. Both parties’ marks are word only marks. The applicant’s mark consists of the word “PATRONUS” whereas the opponent’s mark consists of the word “PATRONAS”. There are no other elements that contribute to the overall impression of the marks, which lies in the words themselves.

Visual comparison

83. Visually, the marks overlap through the use of the letters “PATRON” at their beginnings and the letter “S” at their ends. The marks differ in the presence of the letter “U” as the seventh letter in the applicant’s mark and the letter “A” as the seventh letter in the opponent’s mark. Overall, the marks share seven out of eight letters, the differing letter is located is located towards the end of the mark and

bearing in mind that consumers tend to focus on the beginning of the marks,[15] overall, I find that the marks are visually similar to a high degree.

Aural comparison

84. The opponent's mark consists of three syllables and will be pronounced as "PA-TROH-NASS" or "PA-TROH-NUSS". The applicant's mark also consists of three syllables and will be pronounced as "PA-TROH-NUSS". The first two syllables of the marks are identical, irrespective of how the third syllable of the opponent's mark will be pronounced, and I remind myself that consumers tend to focus on the beginnings of marks. I note the third syllable of the opponent's mark could result in different pronunciations of the opponent's mark. If the third syllable of the opponent's mark is pronounced as "PA-TROH-NUSS", it will be pronounced identically to the applicant's mark. In this case, I find the marks to be aurally identical. However, if the opponent's mark is pronounced as "PA-TROH-NASS", the third syllable will be pronounced differently to that of the applicant's mark. Given the first two syllables of the marks are identical and given the high similarity of the third syllable, in this case I find the marks to be aurally highly similar.

Conceptual comparison

85. The opponent submits that the marks are conceptually similar but does not elaborate any further. The opponent also states that the marks are semantically identical. The applicant states that the applicant's mark is distinctly different from the opponent's mark and it differs in meaning.

86. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer in the UK.[16] The opponent's mark consists of the word "PATRONAS". I consider the majority of consumers would understand this to be an invented word with no obvious meaning. The applicant's mark consists of the

[15] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02
[16] *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

word “PATRONUS”. Again, I consider that the majority of consumers would understand this to be an invented word with no obvious meaning.

87. If both marks will be viewed as either made-up or foreign language words with no obvious meaning to the UK consumer, as neither mark has a meaning, they are not capable of a conceptual comparison. The conceptual position is, therefore, neutral.

Distinctive character of the opponent’s mark

88. In Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV, Case C-342/97 the CJEU stated that:

> “22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

89. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. The evidence filed by the opponent is not sufficient to find an enhanced level of distinctiveness. Therefore, I only have the inherent position to consider.

90. The opponent's mark comprises the word "PATRONAS". As previously outlined in my comparison of the marks, I consider that the majority of consumers will consider the opponent's mark to be an invented word which has no direct or specific meaning for any of the goods or services relied upon. Therefore, I consider that the opponent's mark enjoys a high degree of distinctiveness.

Likelihood of confusion

91. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

92. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have

the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods and services at issue are marketed, and in which type of store/platform they are made available.

93. Throughout this section of the decision, I have found the respective goods and services of the opponent in class 9, class 38 and class 42 compared to the applicant's services to be similar to a low degree. The average consumers are members of the general public at large and business users or professionals, for example, in the financial sector who, depending on the goods and services at issue, will select them via primarily visual means (though I do not discount an aural component) after having paid either a low or a high degree of attention during the purchasing process depending on the goods and services at issue. I have found the marks to be similar to a high degree from a visual perspective. Depending on how the third syllable of the opponent's mark is pronounced, I have found the marks to be either aurally identical or aurally highly similar. I have found the marks to be conceptually neutral. I have found the opponent's mark to possess a high degree of inherent distinctive character.

94. In light of the above and taking into account that the marks share the same seven out of eight letters in the same order and differ only in the seventh letter, and bearing in mind the principle of imperfect recollection, I consider it likely that in seeking to recollect the parties' marks for one another, consumers are liable to misremember which mark is which due to the high level of similarity. I do not consider that the different letter will be noticed by the majority of consumers. I consider this finding applies whether the consumer is paying a low or a high level of attention and where there is a low level of similarity between the goods and services. Consequently, I consider that there exists a likelihood of direct confusion between the marks at issue.

CONCLUSION

95. The opposition under section 5(2)(b) succeeds in its entirety and, subject to any successful appeal against my decision, the applicant's mark is refused registration

in respect of all of the services the opponent opposed. Consequently, the applicant's mark can proceed to registration for the following services given there was no opposition raised by the opponent in relation to these services:

> Class 36 – Insurance brokerage services; Carbon brokerage services; Pawnbrokerage; Appraisals [valuation] of antiques; Appraisals [valuation] of jewellery; Art appraisal.

COSTS

96. The opponent has succeeded in full and is, therefore, entitled to a contribution towards their costs based upon the scale published in Tribunal Practice Notice 1/2023 In the circumstances, I award the opponent the sum of £950 as a contribution towards its costs. The sum is calculated as follows:

Official fee:	£100
Preparing a notice of opposition:	£250
Preparing evidence and submissions:	£600
Total:	**£950**

97. I hereby order Patronus Wealth Holdings Limited to pay PATRONAS Financial Systems GmBH the sum of £950. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 27th day of February 2026

N Barratt
For the Registrar

Annex 1 – Opponent's goods and services

Opponent's goods and services
Class 9 Computer software; Software; Financial management software; Computer software relating to the handling of financial transactions; Computer software relating to financial history; Computer software for producing financial models; Communication software; Communications servers [computer hardware]; Communications processing computer software; Software for commerce over a global communications network; Network servers; Computer programs for network management; Local area networks; Network access server operating software; Computer software for communication between computers over a local network; Electronic communications software for financial industry stakeholders; Software for support and optimisation of communications within the financial industry; Computer software for portfolio management and risk management for banks, stockbrokers and investment companies; Computer software for financial affairs, monetary affairs, computer analyses of stock exchange information, computerised securities brokerage, computerised information relating to stocks, automated banking, computerised banking, electronic banking, computerised information relating to banking matters, computerised financial consultancy, computerised financial data services, computerised information relating to finance, automated recording of financial transactions, actuarial services relating to financial transactions, computerised financial services relating to foreign currency dealings, computerised financial information, providing of financial services by means of a global computer network or the internet, computerised information relating to financial management, trading in currencies, financial consultancy, financial information, data and advice, consultancy in relation to financial risk management.
Class 36 Financial affairs; Monetary affairs; Computer analyses of stock exchange information; Computerised securities brokerage services; Computerised information services for stocks; Automated banking services; Computerised banking services;

Banking and financing services; Electronic banking services; Computerised information services relating to banking matters; Computerised financial advisory services; Computerised financial data services; Computerised financial services; Provision of computerised financial information; Automatic recording services for financial transactions; Actuarial services relating to financial transactions; Computerised financial services relating to foreign currency dealings; Computerised financial information services; Provision of financial services by means of a global computer network or the internet; Computer information services relating to financial management; Trading in currencies; Financial consultancy; Financial advisory and management services; Financial information, data, advice and consultancy services; Advisory services relating to [financial] risk management.

Class 38

Electronic communication services for financial institutions; Electronic communication services for preparing financial information; Telecommunications services between financial institutions; Electronic communication services for banks; All of the aforesaid services being provided also for investment companies and stockbrokers; Telecommunication services; Telecommunication gateway services; Local area networks (Leasing of -); Transmission of information via national and international networks; Electrical data transmission over a global remote data processing network, including the internet; All of the aforesaid services being in particular in connection with the financial industry; All of the aforesaid services also being provided in real time.

Class 42

Design and development of computer hardware and software; Developing computer software; Maintenance and repair of software; Design, development and implementation of software; Creation, maintenance and adaptation of software; Advisory services relating to computer programming; Rental of computer software, data processing equipment and computer peripheral devices; Design of information systems relating to finance; Leasing of computer software; Rental of software for Internet access; Engineering services relating to the design of communications systems; Monitoring of network systems; Development of computer based

networks; Configuration of computer systems and networks; Professional consultancy relating to data processing; Consultancy services for analysing information systems; Consultancy services for designing information systems; All of the aforesaid services being in particular in connection with the financial industry; All of the aforesaid services being in particular for communication between financial industry stakeholders.